

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LORD ABBETT AFFILIATED FUND, INC.,
et al., Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

NAVIENT CORPORATION, *et al.*,
Defendants.

C.A. No. 16-112-MN

Judge Maryellen Noreika

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A BRIEF IN RESPONSE
TO DEFENDANTS' SUR-REPLY AND IN FURTHER SUPPORT OF
MOTION FOR CLASS CERTIFICATION, APPOINTMENT OF CLASS
REPRESENTATIVES, AND APPOINTMENT OF CLASS COUNSEL**

Plaintiffs Lord Abbett Affiliated Fund, Inc., Lord Abbett Equity Trust – Lord Abbett Calibrated Mid Cap Value Fund, Lord Abbett Bond-Debenture Fund, Inc., and Lord Abbett Investment Trust – Lord Abbett High Yield Fund (collectively, the “Plaintiffs”) respectfully move this Court for leave to file a short three (3) page brief responding to Defendants’ sur-reply (D.I. 157) in order to address new arguments and evidence submitted by Defendants in opposition to Plaintiffs’ Motion for Class Certification, Appointment of Class Representatives and Appointment of Counsel (the “Motion for Class Certification”). *St. Clair Intellectual Prop. Consultants, Inc. v. Samsung Elecs. Co.*, 291 F.R.D. 75, 80 (D. Del. 2013) (additional briefing appropriate “if it responds to new evidence, facts, or arguments.”).

On December 27, 2019, Defendants filed a request for oral argument stating that “[b]riefing on [the Motion for Class Certification] is now complete.” D.I. 131. On July 23, 2020, the Court ordered Defendants to file a sur-reply brief “responding to the arguments made by Plaintiffs in their reply brief.” D.I. 156. In the sur-reply, Defendants submitted new evidence in the form of a

declaration (*see* D.I. 158) and raised new points in support of their arguments that investors in the Initial Navient Shares and the Navient Notes, respectively, should be excluded from the Class.¹ Defendants could have raised these matters in their opposition brief, but did not. Plaintiffs request an opportunity to address these matters in a short three (3) page response to Defendants' sur-reply, which Plaintiffs respectfully submit will "allow the Court to more fully and fairly evaluate the motion." *Samsung Elecs. Co.*, 291 F.R.D. at 80.

Moreover, because the Motion for Class Certification is Plaintiffs' motion, granting Plaintiffs leave to file a brief responding to Defendants' sur-reply will preserve the normal course of briefing by allowing the movants (Plaintiffs) to file the final written submission on their motion.

Accordingly, Plaintiffs respectfully request leave to file a short response, totaling no more than three (3) pages, to Defendants' sur-reply, which totals ten (10) pages. Plaintiffs' proposed response is attached to this motion as **Exhibit A**. In addition, Plaintiffs are prepared to address Defendants' arguments at oral argument.

Plaintiffs have conferred with Defendants as to whether they would consent to the filing of the requested brief. Defendants stated that they "do not consent" to Plaintiffs' request.

¹ Unless otherwise noted, all capitalized terms herein and in Exhibit A (Plaintiffs' Response) are defined in the Complaint (D.I. 59) or the Glossary in Plaintiffs' Reply brief (D.I. 129 at iv-vi); all emphasis is added; internal citations and punctuation are omitted; and citations to "Ex. _" refer to the consecutive exhibits to the Robinson Declaration (D.I. 106) and the Robinson Reply Declaration (D.I. 130).

Dated: August 7, 2020

By: /s/ Joel Friedlander
Joel Friedlander (Bar No. 3163)
Christopher M. Foulds (Bar No. 5169)
Christopher P. Quinn (Bar No. 5823)
FRIEDLANDER & GORRIS, P.A.
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
Tel: (302) 573-3500
Fax: (302) 573-3501
jfriedlander@friedlandergorris.com
cfoulds@friedlandergorris.com
cquinn@friedlandergorris.com

*Liaison Counsel for Lead Plaintiffs, and
Liaison Counsel for the Class*

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

Salvatore Graziano
(Admitted *pro hac vice*)
Jeremy P. Robinson
(Admitted *pro hac vice*)
Jesse Jensen
(Admitted *pro hac vice*)
Ryan Dykhouse
(Admitted *pro hac vice*)
1251 Avenue of the Americas
New York, New York 10020
Tel: (212) 554-1400
Fax: (212) 554-1444
salvatore@blbglaw.com
jeremy@blbglaw.com
jesse.jensen@blbglaw.com
ryan.dykhouse@blbglaw.com

*Counsel for Lead Plaintiffs, and
Lead Counsel for the Class*